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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 138.

KENTUCKY WHIP & COLLAR COMPANY, - Petitioner,

versus

ILLINOIS CENTRAL RAILROAD COMPANY, - Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

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November 7, 1936.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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Petitioner brought action for mandatory injunction to compel respondent to transport prison-made goods in interstate commerce and to procure declaration of rights. Injunction denied because of Ashurst-Sumners Act.

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Petitioner manufactures leather goods with convict labor. It tendered to respondent twenty-five separate shipments for interstate transportation. Respondent refused each shipment because of non-compliance with Ashurst-Sumners Act.

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Respondent refuses to transport convict-made goods in interstate commerce in conflict with Ashurst-Sumners Act unless said Act be declared unconstitutional. Such an Act forbidding transportation of intoxicating liquors was upheld.

Clark Distilling Co. v. Western Maryland Railway Co., 242 U. S. 311.

An Act subjecting convict-made goods upon arrival to the laws of the State of destination was upheld.

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KENTUCKY WHIP & COLLAR COMPANY, - *Petitioner,*

v.

ILLINOIS CENTRAL RAILROAD COMPANY, - *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

May it please the Court:

This is a proceeding to review a decision of the Circuit Court of Appeals for the Sixth Circuit, affirming a decree of the District Court of the United States for the Western District of Kentucky. The petitioner brought this suit to procure a mandatory injunction compelling respondent to transport prison-made goods in interstate commerce, and to procure a declaration of rights (R., pp. 1-24). The respondent filed a motion to dismiss the bill (R., pp. 24-25). This motion was sustained by the District Judge, although he held the

Ashurst-Sumners Act unconstitutional in part (R., pp. 28-43), 12 F. Supp. 37. This decision of the District Judge, dismissing the bill, was affirmed by the Circuit Court of Appeals; however, the Circuit Court of Appeals held the entire Ashurst-Sumners Act constitutional, 84 Fed. (2d) 168.

PARTIES AND FACTS.

The petitioner is a corporation engaged in the manufacture of leather goods at the Kentucky State Penitentiary situated at Eddyville, Kentucky, a station located on the line of the respondent, Illinois Central Railroad Company. In its manufacturing work, petitioner uses the labor of confined convicts (R., p. 1). The leather goods manufactured are sold in interstate commerce, and petitioner seeks to have its manufactured articles shipped to these other States where its customers are located. In this suit it appears as a shipper or prospective shipper. It offered to respondent interstate shipments including convict-made goods, consigned to twenty-five separate destinations, each in a different State. These shipments are described in petitioner's bill, paragraphs 6 to 30 (R., pp. 4-22).

Respondent is a common carrier, and the only railroad serving the point from which the petitioner ships. It, of course, is willing to carry all lawful shipments offered to it. The shipments involved in this suit were offered to respondent on August 13, 1935. The Ashurst-Sumners Act, prohibiting the transportation of prison-

made goods in interstate commerce, where said goods are to be used in violation of any law of the State to which the goods are consigned, was approved by the President on July 24, 1935.

The shipments described in paragraphs 6 to 15 of the petitioner's bill (R., pp. 4-11) were destined to points in States where the sale of prison-made goods is prohibited. The shipments described in paragraphs 16 to 20 of the bill (R., pp. 11-15) were destined to points in States where prison-made goods are required to be marked so as to show such fact. The shipments described in paragraphs 21 to 30 of the bill (R., pp. 15-22) were destined to points in States which have no laws regulating the sale of prison-made goods. These shipments, however, were not labeled on the outside of the packages offered for shipment, as required by Section 2 of the Act of July 24, 1935.

The respondent recognizes the petitioner's rights as a shipper to have its goods transported, unless such transportation be illegal. It refused to accept each of the shipments proffered, however, because of the provisions of the Ashurst-Sumners Act. Each bill of lading tendered to respondent was endorsed as follows: "Shipment refused because prohibited by Act of Congress approved July 24, 1935."

RESPONDENT'S LEGAL POSITION.

The Act of July 24, 1935, contains penalty provisions. When these shipments were offered, the respondent was faced with possible civil litigation if it refused to transport the shipments. It was also faced with possible prosecutions and penalties if it accepted them. It stands ready to perform its duties, but it maintained at the time these shipments were tendered, and maintains now, that it cannot transport this prohibited merchandise unless the statutory prohibition be declared unconstitutional.

Transportation of intoxicating liquors into prohibition States was, of course, forbidden by the Webb-Kenyon Act. That Act was upheld by this Court. Clark Distilling Co. v. Western Maryland Railway Co., 242 U. S. 311.

Convict-made goods are, by the Hawes-Cooper Act, made, upon arrival, subject to the laws of the State of destination, just as if manufactured there. This Act also has been upheld by this Court. Whitfield v. Ohio, 297 U. S. 431.

The District Court held that the prohibition against transportation of prison-made goods is void. The Circuit Court of Appeals, while it affirmed the District Court, held that this prohibition was valid. The respondent is anxious for a decision by this Court upon the validity of the statute, because it must have a guide to determine whether or not shipments of prison-made goods can be accepted. The particular shipments

offered were not labeled as required by Section 2 of the Ashurst-Sumners Act. Under the decision of the District Court, as well as of the Circuit Court of Appeals, such shipments cannot legally be accepted by a carrier. Upon this point, also, respondent is anxious for a decision as to the validity of the Act.

The respondent's position is clear. It desires to comply with the law. If this Act be held valid, then it must and will refuse to accept shipments prohibited by the Act. If the Act be held unconstitutional, respondent will transport such shipments for the petitioner or any other shipper. We, therefore, await the decision of this Court.

Respectfully submitted,

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